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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

THE ASIATIC PETROLEUM COMPANY
(PHILIPPINE ISLANDS), LIMITED,
Petitioner,

versus

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

PETITIONER'S BRIEF IN REPLY

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INDEX

PAGE

PETITIONER'S BRIEF IN REPLY

Jurisdiction 1
The Merits 4

Table of Cases Cited

Cardona v. *Quinones*, 240 U. S. 83 6

Copper Queen v. *Arizona Board*, 206 U. S. 474..... 6

English v. *Arizona*, 214 U. S. 359..... 5

Gsell v. *Insular Collector of Customs*, 239 U. S. 93.... 3

Ibanez v. *Hongkong & Shanghai Banking Corp.*, 246 U. S. 627 5

Ker v. *Couden*, 223 U. S. 268 5

Lewis v. *Herrera*, 208 U. S. 309..... 6

Nadal v. *May*, 233 U. S. 447 5

Philippine Sugar Estates Development Co., Inc. v. *Philippine Islands*, 247 U. S. 385 .....4, 5

Phoenix Ry. v. *Landis*, 231 U. S. 578 5

Santa Fe v. *Friday*, 232 U. S. 694..... 5

Sturges v. *Crowninshield*, 4 Wheat., 122, 191..... 4

Villaneuva v. *Villaneuva*, 239 U. S. 293 5

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PETITIONER'S BRIEF IN REPLY

Jurisdiction

This Court's jurisdiction over the present case was not affected by the enactment of the Philippine Independence Act of March 24, 1934 (48 Stat., 456). That Act provided:

> "Sec. 7. Until the *final and complete* withdrawal of American sovereignty over the Philippine Islands
>
> * * * * * * * *
>
> (6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; * **." (48 Stat. 460, 462).

Final and complete withdrawal of American sovereignty over the Islands (within the contemplation of the introductory paragraph of Section 7) has not occurred, and is not imminent. Section 10 of the Act provides:

> "RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY
>
> "Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force" (48 Stat. 463).

Nor does the enactment of the Philippine Independence Act affect either the construction of the Philippine Tariff Act of 1909 (36 Stat. 130, 176), or the rights of petitioner or respondent thereunder.

The importation into the Philippines and the sale of this fuel oil, the filing of the drawback entries with respondent, and respondent's rejection thereof, had all taken place *before the enactment* of the Philippine Independence Act. The

claims were rejected by respondent on August 3, 1933 (R. 126). The Independence Act was not enacted until March 24, 1934 (48 Stat. 456).

Neither the character, the source, the authority nor the interpretation of the Tariff Act of 1909, in its application to transactions in and before 1933, was affected by this subsequent Independence legislation. And assuming, as respondent argues (his Brief, p. 8), that the Tariff Law of 1909 was repealed by the Independence Act in March, 1934, and that it was then or thereafter reinstated as Philippine legislation, those facts, occurring in 1934 and 1935, are without significance here except in so far as they throw into relief the fact that, in 1933, the tariff law of 1909 was a law of the United States which had neither been repealed, nor reenacted by the Philippine legislation.

Petitioner's right to the drawbacks here claimed had become vested property rights prior to the enactment of that legislation. Obviously an Independence Act cannot have retroactive application. None of the provisions of this Act are so expressed as to be retroactive, and upon unquestioned principles of construction they cannot be so applied as to divest vested rights.

The Tariff Act of 1909 did not cease to be a statute of the United States because of the enactment of the Philippine Organic Act of August 29, 1916 [39 Stat. 545]. [See Respondent's Brief, p. 4 *et seq.*].

When enacted by the Congress in 1909, this Tariff Law applied only to the Philippine Islands; was administered by the insular collector of customs; and its purpose was to raise Philippine revenue. None the less, it was a statute of the United States (*Gsell* v. *Insular Collector of Customs*, 239 U. S. 93). The statute has never been amended. Neither

its source nor any other fact concerning it was changed by the 1916 legislation.

In arguing that the 1916 legislation changed the character of the Tariff Act, counsel fails to distinguish between the grant of a power and its exercise. The so-called Organic Act left prior Congressional legislation in effect in the same way in which State legislation remains effective in a federal field prior to pre-emption thereof by Congressional enactment.

The Merits

The rule underlying respondent's argument is that this Court will not overrule a local tribunal unless its decision is clearly erroneous. The rule does not mean that this Court will not exercise its independent judgment (*Philippine Sugar Estates Development Co., Inc.* v. *Philippine Islands,* 247 U. S. 385; Respondent's Brief, p. 10). A Congressional enactment being involved, and there having been a conflict between a decision of a territorial tribunal and a decision of the Court of Claims, the question appropriately awaits final determination by this Court.

It appears, moreover, that there is no established local construction, in the Islands, of this Revenue Act. No other decision was cited below. The present decision was by a divided court, and arose after the Insular legal authorities had changed their interpretation of the Act.

The question presented is not one of purely local concern, in the sense contended for. It involves the application of a statute based upon, and substantially identical with other revenue statutes of the United States, all involving the same theory and principles of taxation and rebate. In

that respect it resembles *Philippine Sugar Estates* v. *Philippine Islands* (247 U. S. 385, *supra,* cited by respondent) in which a general principle of equity which had been codified in the Philippine Insular Code was misapplied. This Court reversed the judgment.

The other cases cited by respondent do not support his argument.

English v. *Arizona,* 214 U. S. 359, presented merely the interpretation of an Arizona territorial statute concerning the levying of assessments on real estate for purposes of financing local improvements. This Court held that the statute had been properly construed.

Santa Fe v. *Friday,* 232 U. S. 694, presented nothing except a question of the jurisdiction of the local courts. This Court said:

> "The only argument addressed to us is an attack upon the jurisdiction of the court that tried the case."

Ker v. *Couden,* 223 U. S. 268, and *Villaneuva* v. *Villaneuva,* 239 U. S. 293, involved the interpretation of territorial code provisions taken from the law of Spain involving, respectively, accretion and avulsion with respect to real estate, and divorce.

Ibanez v. *Hongkong & Shanghai Banking Corp.,* 246 U. S. 627, involved an interpretation of an ambiguous territorial statute, in accordance with the construction of similar statutes in other jurisdictions.

Nadal v. *May,* 233 U. S. 447, presented nothing except a question of fact, as to when a provision of the Code of Porto Rico went into operation. It was in accord with earlier decisions on that question.

Phoenix Ry. v. *Landis,* 231 U. S. 578, involved the question whether the representative of an estate, suing

under an Arizona statute with respect to an action for death by negligence, need prove the existence of persons beneficially entitled under the estate.

Cardona v. *Quinones*, 240 U. S. 83, involved local rules of pleading and practice, and of fact, which appeared to have been correctly decided below.

Lewis v. *Herrera*, 208 U. S. 309 and *Copper Queen* v. *Arizona Board*, 206 U. S. 474 (both cited, Respondent's Brief, p. 12), involved comparisons of the constructions placed upon statutes of different jurisdictions. There was little or no similarity in the language of the statutes actually compared in the *Lewis* case. In the *Copper Queen* case, the construction complained of had controlled the statute for a long period prior to its enactment. The reenactment of the statute was regarded as a ratification of the construction attacked. The conflicting construction appeared to be the more vulnerable.

In all of the cases this Court appears to have concurred in the construction placed upon the statutes below. All of them involved decisions on the merits, rather than upon applications for review.

WM. D. WHITNEY,
Counsel for Petitioner.

January 20, 1936.

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OCTOBER TERM, 1935

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THE ASIATIC PETROLEUM COMPANY (PHILIPPINE ISLANDS), LIMITED,
Petitioner,

VERSUS

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	PAGE
THE OPINIONS OF THE COURTS BELOW	1
Jurisdiction of this Court	1
Decision and Questions Presented	3
The Facts	3
SPECIFICATION OF ERRORS	4
SUMMARY OF ARGUMENT	5
ARGUMENT	
PART ONE.—This Court Has Jurisdiction to Review the Judgment of the Supreme Court of the Philippine Islands	6
Point I.—The Philippine Tariff Act of 1909 was a statute of the United States	6
Point II.—The Organic Act of 1916 did not convert pre-existing United States statutes into merely insular statutes	7
(1) The Organic Act did not in terms alter the status of statutes of the United States	7
(2) The Organic Act was not intended to alter the status of the United States	8
(3) The reservation of Congressional power in the Organic Act did not invalidate the limited grant to the Philippine Legislature	11
Point III.—The Philippine Independence Act of 1934 did not convert pre-existing United States statutes into merely insular statutes	12

PAGE

(1) The Philippine Tariff Act of 1909 was not repealed by the Philippine Independence Act of 1934 or by the Philippine Constitution..... 12

(2) Even if the Philippine Tariff Act of 1909 were so repealed, this case involves only drawbacks alleged to have been unlawfully withheld before 1934..... 15

Point IV.—Omission of the Philippine Tariff Act from the United States Code neither did, nor was intended to, deprive it of its character as a statute of the United States..... 16

PART TWO.—This Decision of the Supreme Court of the Philippine Islands Reads into Section 21 of the Philippine Tariff Law a Limitation Which is Inconsistent with its Language, and Contrary to Its Purpose 18

(1) The Insular Supreme Court's construction of the Act in this respect is inconsistent with the plain terms of the Act..... 19

(2) The Philippine Supreme Court's construction of the Act in the respect complained of its contrary to the purpose for which it was enacted..... 23

TABLE OF CASES

	PAGE
Adams Express Company v. *Kentucky*, 238 U. S. 190	19
Campbell v. *United States*, 107 U. S. 407	26
Cunard Steamship Co. v. *United States*, 25 Ct. Cl. 428	20
Downes v. *Bidwell*, 182 U. S. 244	12
Gsell v. *Insular Collector of Customs*, 239 U. S. 93	5, 6, 10
Hampton & Co. v. *United States*, 276 U. S. 394	26
Kennedy v. *United States*, 23 Ct. Cl. 363	20, 21
National Bank v. *County of Yankton*, 101 U. S. 129	12
Panama Refining Co. v. *Ryan*, 293 U. S. 388	11
Petri v. *Creelman Lumber Co.* 199 U. S. 487, 495	19
Public Utility Commissioners v. *Ynchausti & Co.*, 251 U. S. 401	10
St. Louis & Iron Mountain Railway v. *Taylor*, 210 U. S. 281	19
Schlitz v. *United States*, 181 U. S. 584	20, 26
Tide Water Oil Co. v. *United States*, 171 U. S. 210	26
United States v. *Allen*, 163 U. S. 499	20
United States v. *Heinszen & Company*, 206 U. S. 370	11
United States v. *Hill*, 248 U. S. 420	19
Wright v. *Ynchausti & Co.*, 272 U. S. 640, 650-651	15
Yangao v. *Aldanese*, 51 Phil. 348	21

TABLE OF STATUTES

Philippine Tariff Act of August 5, 1909 (L. 1909, Ch. 8, Sec. 21; 36 Stat. 130, 176), 2, 3, 4, 5, 6, 8, 9, 12, 14, 15, 16, 18, 21, 23, 24

Organic Act of August 29, 1916 (L. 1916, Ch. 416; 39 Stat. 545) 5, 6, 7, 8, 10, 11, 13

Philippine Independence Act of March 24, 1934 (L. 1934, Ch. 84, Sec. 15; 48 Stat. 456, 464), 2, 5, 6, 12, 13, 14, 15, 16

PAGE

Act of February 13, 1925 (L. 1925, Ch. 229, Sec. 7; 43 Stat. 940) 1
Act of March 3, 1883 (L. 1883; 22 Stat. 488, 511, Schedule N) 20
Act of June 19, 1886 (L. 1886; 24 Stat. 81) 20
Act of 1890 (L. 1890; 26 Stat. 600) 20
Act of 1909 (L. 1909; 36 Stat. 140) 21
Act of March 3, 1927 (L. 1927, Ch. 375; 44 Stat. 1401) 16
United States Code, 1935, Table of Statutes Repealed, page 2403 17
United States Code, Title 1, Sec. 54(a) 17
United States Code Annotated, Title 48, Sec. 1012 18
Constitution of the Commonwealth of the Philippine Islands, Article 15, Sec. 2 ..... 14, 15
Code of Civil Procedure of Philippine Islands, Sec. 275 4

TABLE OF HEARINGS AND REPORTS

Congressional Record, 1931, page 6817 17
Message of President Roosevelt, dated March 4, 1935, to the 74th Congress, 1st Session, and annexed Report of the Postmaster General, in H. R. Document No. 118 24
Report No. 713 to the Senate, 74th Congress, 1st Session, and annexed Senate Document No. 60, concerning Merchant Marine Policy and Shipping and Shipbuilding Subsidies 24
H. R. Document No. 14 to the 61st Congress, First Session 24
Hearings on October 18-24, 1929, before the Subcommittee on Commerce of the United States Senate Concerning the Extension of the Coastwise Shipping Laws of the United States to the Philippine Islands 26

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PETITIONER

THE OPINIONS OF THE COURTS BELOW

The opinion of the Court of First Instance of Manila (R. 127-131), the opinion of the Supreme Court of the Philippine Islands (R. 134-143), and the dissenting opinion of four justices thereof (R. 143-154), are not yet reported.

STATEMENT

Jurisdiction of this Court

The jurisdiction of this Court is invoked under the Act of February 13, 1925, Ch. 229, Sec. 7 (43 Stat. 940) which provides:

> "that in any case in the Supreme Court of the Philippine Islands wherein * * * any statute * * * of the

> United States is involved, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by *certiorari*, that the cause be certified to it for review and determination."

The Court's jurisdiction has been preserved by the Philippine Independence Act (Act of March 24, 1934, ch. 84, 48 Stat. 456, 48 U. S. C. A. § 1231 *et seq.*), which provides (in sub-division 6 of § 7 thereof, 48 Stat. 462, 48 U. S. C. A. § 1237) that

> "Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law * * *."

The statute, enacted by the Congress of the United States and involved in the decision of the Supreme Court of the Philippine Islands, is Sec. 21 of the Philippine Tariff Act of 1909 (36 Stat. 176):

> "Sec. 21. That on all fuel imported into the Philippine Islands which is afterwards used for the propulsion of vessels engaged in trade with foreign countries, or between ports of the United States and the Philippine Islands, or in the Philippine coastwise trade, a refund shall be allowed equal to the duty imposed by law upon such fuel, less one per centum thereof, which shall be paid under such rules and regulations as may be prescribed by the insular collector of customs."

The date of the judgment of the Supreme Court of the Philippines sought to be reviewed is July 26, 1935 (R. 162-163), and the petition for a writ of certiorari was filed January 2, 1936, and granted February 3, 1936 (R. 168).

Decision and Questions Presented

The only questions presented are questions of law, namely (1) whether Section 21 of the Philippine Tariff Act of 1909 is a statute of the United States within the meaning of the Act of February 13, 1925, conferring jurisdiction to review decisions involving a statute of the United States, and (2) whether the refund provided for by Section 21 of the Philippine Tariff Act of 1909 is payable with respect to fuel oil used for the propulsion of vessels *of foreign registry* engaged in trade with foreign countries [R. 136].

The facts are presented by stipulation [R. 21-30] and 22 written exhibits annexed thereto [R. 30-127].

The Facts

The petitioner is a corporation of the Philippine Islands.

The respondent is the Insular Collector of the Philippines.

On various dates during the latter part of 1932 and the first six months of 1933, petitioner imported quantities of fuel oil into the Philippine Islands and paid the appropriate duties thereon [R. 30-126].

Petitioner sold part of said fuel oil to local agents of foreign shipping firms, subject to the agreement with said firms that drawbacks of customs duties paid on said fuel oil were to be for the account of petitioner [R. 30-126].

In due course said oil was put into the fuel tanks of various vessels of British, Swedish, Dutch, Danish or Norwegian registry, and was used by them for their propulsion while engaged in trade between the Philippine Islands and foreign countries [R. 29].